

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

BUCKEYE TRANSPLANT SERVICES, LLC }
v. } Civil Action No.
UNITED NETWORK FOR ORGAN } 3:23 CV 427
SHARING }

July 6, 2023

COMPLETE TRANSCRIPT OF PHONE CONFERENCE
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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KRISTA M. LISCIO, RMR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

(The proceeding commenced at 4:02 p.m.)

THE COURT: *Buckeye Transplant Services, LLC*
against United Network for Organ Sharing. 3:23 CV 427.

Starting with the counsel for the plaintiff, who
is here on line?

MR. KAPPELMAN: Good afternoon, Your Honor.

Ben Kappelman for plaintiff Buckeye.

MR. BENNETT: Your Honor, Ellis Bennett. We're
both here as counsel for Buckeye.

Nobody else for the plaintiff?

THE COURT: Okay.

Defendant?

MR. BROUGHTON: Good afternoon, Your Honor.

Turner Broughton from Williams Mullen here in
Richmond on behalf of UNOS. And I know that there are a
couple of folks here as well from Winston & Strawn.

MR. WEBBER: Good afternoon, Your Honor.

Thomas Webber with Winston & Strawn on behalf of
UNOS. I'm also here with my partner, Dan Blouin, also of
Winston.

THE COURT: Dan who?

MR. KOTTKAMP: And one more to add.

THE COURT: Dan who?

MR. BLOUIN: B-L-O-U-I-N.

MR. KOTTKAMP: And one more to add. And that is

1 Nathan Kottkamp with Williams Mullen.

2 THE COURT: Mr. Kottkamp, was that who was
3 speaking?

4 MR. KOTTKAMP: Yes, Your Honor.

5 THE COURT: All right. So you-all need to give
6 your names when you speak so the court reporter will know
7 who's talking, please. And that's important, so keep it
8 in mind. I don't want to have to police it, but I will.
9 I'd rather you-all take it on.

10 All right. We had some discussions yesterday
11 about how to proceed with the case. One of the questions
12 that I'd like to ask you though that might be important
13 for me to understand, are there other entities in the
14 country that do the same thing as Buckeye?

15 How about counsel for Buckeye answering that.

16 MR. KAPPELMAN: Your Honor, this is Ben
17 Kappelman for Buckeye. The short answer is yes -- there
18 are some nuances, but the short answer is yes.

19 THE COURT: All right. Okay. All right.

20 Now, one of the things we were talking about was
21 whether you had wanted to proceed with a bench trial or a
22 jury under the circumstances of the case. Where does the
23 plaintiff stand on that point?

24 MR. KAPPELMAN: Your Honor, we would be okay
25 with a bench trial.

1 I do want to update the Court on some
2 discussions that the parties have had over the last 24
3 hours. And I have spoken telephonically with counsel for
4 the defendant multiple times, and we have exchanged a
5 draft of the document that would enable the parties to
6 resolve this dispute out of court.

7 We were unable to come to final terms on that
8 document before this call, but we are very far along and I
9 expect we're going to be able to come to those terms.

10 And so our -- our request to you, Your Honor, is
11 if you could see fit to give us until maybe Monday at 9:00
12 a.m. to file that document, or a proposed schedule if
13 we're unable to come to terms on that document. I think
14 the parties will -- will be able to complete those
15 negotiations very quickly.

16 THE COURT: All right. "Out of court" meaning
17 what?

18 MR. KAPPELMAN: Meaning I think we would end up
19 having an arbitrator make a decision as to part of this --
20 this dispute. You know, obviously, Buckeye has taken the
21 position that this is a judicial matter, especially as to
22 the emergency injunctive portion. I think we have found a
23 way to accommodate Buckeye and its transplant center
24 client's needs to maintain the status quo, and then the
25 parties can resolve the rest of their dispute, you know,

1 in their arbitration proceeding.

2 But that hasn't been agreed to yet, and I -- I
3 want to give that negotiation the opportunity to complete.

4 THE COURT: All right. Well, would you be --
5 you said "part" of the case. Are you speaking of severing
6 part of the case and leaving it here, or having --
7 dropping part of the claim, or what?

8 MR. KAPPELMAN: No. And I apologize for not
9 being clear. What we are contemplating is dismissing the
10 action without prejudice in the court and then proceeding
11 pursuant to our agreement.

12 THE COURT: All right. You're working on an
13 agreement about how to go forward, is that right?

14 MR. KAPPELMAN: Yes, Judge.

15 THE COURT: All right.

16 For the defense, what do you say?

17 MR. WEBBER: Your Honor, this is Thomas Webber.

18 I would just add that the parties have been
19 working together very productively. And, you know, as
20 counsel for Buckeye said, we're on the cusp of, you know,
21 finalizing the terms of the arrangement he discussed and
22 we're -- we're aligned with the comments of Buckeye's
23 counsel.

24 THE COURT: All right. Well, I think that's a
25 laudable thing. If you can, it's probably a good thing

1 for everybody.

2 So you will file by Monday the 10th of July
3 either a dismissal motion and an understanding of how you
4 are to proceed, or a proposed schedule for proceeding, is
5 that what you said, Mr. Kappelman? Did I capture that
6 right?

7 MR. KAPPELMAN: Yes, Your Honor.

8 THE COURT: And you propose to file that by what
9 time on Monday?

10 MR. KAPPELMAN: I was suggesting 9:00 a.m., Your
11 Honor.

12 THE COURT: Does that suit both of you?

13 MR. WEBBER: Your Honor, this is Thomas Webber.

14 Yes, that's acceptable.

15 THE COURT: All right. Well, I'll expect to
16 hear from you at 9:00 a.m. You can file whatever you're
17 going to file. If there's a proposed schedule, very
18 likely we will talk later in the day about -- about that
19 topic.

20 So I'm glad you're able to see if you can work
21 things out, and I will await what you file on the 10th.

22 And I don't see any need for further discussion,
23 do you, either one of you?

24 No? Okay.

25 MR. KAPPELMAN: Ben Kappelman.

No, Your Honor. And thank you.

THE COURT: All right.

MR. WEBBER: This is Thomas Webber.

No, Your Honor. Thank you.

THE COURT: All right. Thank you.

And I'm glad you're able to keep at it. Go forward. Thank you very much.

MR. KAPPELMAN: Okay. Thank you.

MR. WEBBER: Thank you, Judge.

THE COURT: Bye.

(The proceeding concluded at 4:10 p.m.)

REPORTER'S CERTIFICATE

I, Krista M. Liscio, OCR, RMR, Notary Public in and for the Commonwealth of Virginia at large, and whose commission expires March 31, 2024, Notary Registration Number 149462, do hereby certify that the pages contained herein accurately reflect the notes taken by me, to the best of my ability, in the above-styled action.

Given under my hand this 7th day of August, 2023.

/s/

Krista M. Liscio, RMR
Official Court Reporter